

Final

**Rhode Island Supreme Court  
Ethics Advisory Panel  
Opinion No. 2001-04, Request No. 824  
Issued May 17, 2001**

FACTS:

The inquiring attorney is a former legal counsel for a state agency. As agency counsel, he/she represented the agency in claims made by individuals against the agency in court proceedings pursuant to a statute. The inquiring attorney is now in private practice. Several attorneys have requested that he/she serve as a consultant or as trial counsel on behalf of clients who have filed claims against the agency pursuant to the statute.

ISSUE PRESENTED:

The inquiring attorney asks whether he/she may represent clients in such statutory petitions against the agency in cases in which he was not involved as legal counsel to the agency.

OPINION:

The inquiring attorney may represent private clients in the same type of statutory petitions against the agency as he/she handled as agency counsel. While Rule 1.11 bars the inquiring attorney only from those particular matters in which he/she participated as a government lawyer, the inquiring attorney would be subject to disqualification pursuant to Rule 1.9(b) if the subsequent representation would require him/her to use or disclose confidential information about his/her former government client.

REASONING:

Rule 1.11, and not Rule 1.9(a), governs the scope of a former government employee's conflict of interest obligations. See ABA Standing Comm. On Ethics and Professional Responsibility Formal Op. 97-409 (1997); R.I. Sup. Ct. Ethics Advisory Panel Op. 99-04 (1999). Rule 1.11 states in pertinent part:

**Rule 1.11. Successive Government and Private Employment. -**

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated as a public officer or employee. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

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(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

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Rule 1.11(a) does not disqualify a former government lawyer from representing private clients against his/her government agency in connection with the same kinds of cases he/she handled while a government employee. See ABA Formal Op. 97-409 (1997). Pursuant to Rule 1.11(a), a former government lawyer is barred only from those particular matters in which he/she personally participated.<sup>1</sup> The Panel is of the opinion that the representation is also subject, however, to the constraints of Rule 1.9(b). See ABA Formal Op. 97-409 (1997) (While ABA Model Rule 1.11 pre-empts the field over Model Rule 1.9(a) and (b) regarding former government lawyer's conflict of interest obligations, Model Rule 1.9(c) on use of confidential information about former client (which is the counterpart to R.I. Rule 1.9(b)) applies to former government lawyers.)

Rule 1.9(b) states:

A lawyer who has formerly represented a client in a matter shall not thereafter:

\* \* \*

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally known.

Accordingly, the inquiring attorney may represent private clients in the same type of statutory petitions against the agency he/she handled while employed by the agency. While the inquiring attorney is barred only from those particular matters in which he/she participated as a government lawyer, the inquiring attorney is also subject to disqualification pursuant to Rule 1.9(b) if the subsequent private representation would require him/her to use or disclose confidential information about his/her former government client. See ABA Formal Op. 97-409 (1997).

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<sup>1</sup> Under Rule 1.11(c) which is not applicable to this inquiry, a former government lawyer also is barred from representing a client whose interests are adverse to a person about whom the lawyer acquired confidential government information while employed by the government.